UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:23-81222-CIV-BER

OCEAN REEF CHARTERS, LLC,

Plaintiff,

v.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (ECF No. 138)

Defendant Travelers Property Casualty Company moves for summary judgment on Plaintiff Ocean Reef Charters' first-party bad faith insurance claim. ECF No. 144. For the following reasons, the motion is GRANTED. No reasonable jury could find that Travelers acted in bad faith by denying Ocean Reef's marine insurance claim at a time when it was unclear whether the Florida Anti-Technical Statute applied to that claim.[1] Moreover, even if there were a jury question about Travelers'

[1] The Anti-Technical statute says a marine insurer cannot deny a claim based on a breach of a policy provision unless the breach had a nexus to the loss. Fla. Stat. §627.409(2) (breach or violation of the terms of a maritime insurance policy "does not void the policy or contract, or constitute a defense to a loss thereon, unless such breach or violation increased the hazard by any means within the control of the insured.").

bad faith, Ocean Reef has not produced sufficient non-speculative evidence from which a reasonable jury could find cognizable monetary damages.

I. SUMMARY JUDGMENT STANDARDS

Summary judgment is proper only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1). The party moving for summary judgment has the burden of meeting this exacting standard. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). "The district court should resolve all reasonable doubts about the facts in favor of the non-movant, and draw all justifiable inferences in [the non-movant's] favor." *United States v. Four Parcels of Real Prop.,* 941 F.2d 1428, 1437 (11th Cir. 1991) (internal quotation marks and citations omitted).

> The moving party's burden on a motion for summary judgment "depend[s] on whether the legal issues ... are ones on which the movant or the non-movant would bear the burden of proof at trial." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). "[F]or issues on which the movant would bear the burden of proof at trial, 'that party must show *affirmatively* the absence of a genuine issue of material fact: it must support its motion with credible evidence ... that would entitle it to a directed verdict if not controverted at trial.'" *Id.* (emphasis in original) (quoting *Four Parcels of Real Prop.*, 941 F.2d at 1437). "For issues, however, on which the non-movant would bear the burden of proof at trial, 'the moving party is not required to support its motion with affidavits or other similar material *negating* the opponent's claim

> in order to discharge this initial responsibility.'" *Id.* (emphasis in original) (quoting *Four Parcels*, 941 F.2d at 1437–38).

Nunez v. Coloplast Corp., 461 F. Supp. 3d 1260, 1264 (S.D. Fla. May 20, 2020). An issue is genuine if "a reasonable trier of fact could return judgment for the non-moving party." *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). A fact is material if it "might affect the outcome of the suit under the governing law." *Id.* (quoting *Anderson*, 477 U.S. at 247-48). "The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient; there must be evidence on which a jury could reasonably find for the [non-moving party]." *Anderson,* 477 U.S. at 252.

A non-movant is entitled to all *reasonable* favorable inferences from the evidence, "but an inference based on speculation and conjecture is not reasonable." *Goodman v. Georgia Sw.*, 147 F. App'x 888, 891 (11th Cir. 2005) (quoting *Blackston v. Shook and Fletcher Insulation Co.,* 764 F.2d 1480, 1482 (11th Cir. 1985)). "In deciding whether an inference is reasonable, the court must 'cull the universe of possible inferences from the facts established by weighing each against the abstract standard of reasonableness.' . . . When more than one inference reasonably can be drawn, it is for the trier of fact to determine the proper one." *WSB-TV v. Lee,* 842 F.2d 1266, 1270 (11th Cir. 1988) (quoting *Southway Theatres, Inc. v. Georgia Theatre Co.,* 672 F.2d 485, 493 (5th Cir. Unit B 1982)).

Finally, the non-movant must respond to the movant's arguments with a developed written response. "A court may find that a party waived any challenge to

arguments which it did not address in its response to a summary judgment motion. 'Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones.'" *Palm Beach Polo, Inc. v. Vill. of Wellington,* No. 19-80435-CIV, 2021 WL 2499008, at *5 (S.D. Fla. May 14, 2021) (citations omitted). And, a party cannot raise an issue for the first time at oral argument. *Rivas v. Berryhill,* No. 16-CV-61861, 2018 WL 328796, at *4 (S.D. Fla. Jan. 9, 2018).

II. UNDISPUTED FACTS[2]

1. Ocean Reef owned the 1998 Hatteras 92-foot motor yacht named the My Lady.
2. Richard Gollel is the principal of Ocean Reef.
3. Travelers issued quay yacht policy number ZYM-21N30664-16-ND to Ocean Reef, as the named insured, bearing effective dates of October 10, 2016 to October 10, 2017 ("the Policy").
4. The Policy identifies Ocean Reef as having a mailing address of 45 Cedarfield Commons, Suite #FA, Rochester, New York 14612.
5. The yacht was damaged during Hurricane Irma on or about September 10, 2017.
6. Ocean Reef reported the damage to Travelers on or about September 12, 2017.

[2] Unless otherwise noted, these facts are taken from Travelers' Statement of Material Fact ("DSOF"), ECF No. 137, and were admitted by Ocean Reef. ECF No. 144. For DSOF 7, 14, 20, 31, and 36, Ocean Reef tried to limit or explain its admission without a citation to conflicting evidence in the record. Because there is no citation to conflicting evidence in the record, these DSOFs are admitted. S.D. Fla. Local Rule 56.1(c).

7. The Policy contains the following captain and crew warranties:

CAPTAIN WARRANTY

* * *

> It is warranted you employ a professional captain for the yacht shown on the Declarations Page of this policy. Such captain shall be employed full time and approved by us. We will pay up to $1,500 for the cost of hiring a replacement captain, approved by us, if your captain is unable to perform his regular duties due to a medically certified cause.

* * *

CREW WARRANTY

* * *

> You employ 1 full time or part time professional crew for your yacht shown on the Declarations page of this policy. We also provide coverage for any additional, temporary crew you employ.

8. At the time the yacht was damaged, Ocean Reef did not have a full-time captain approved by Travelers or a professional crew.

9. Within hours of the claim being reported, Travelers assigned it to claim handler Joseph Grenzebach, who immediately began working on it.

10. Mr. Grenzebach called Richard Gollel that same day to discuss the claim.

11. Mr. Grenzebach had handled a prior Ocean Reef claim about a personal watercraft, and during his adjustment of that claim, Mr. Gollel told Travelers that Ocean Reef did not have an approved captain for the yacht.

12. Mr. Grenzebach referred the Hurricane Irma claim to an in-house investigator to meet with Mr. Gollel and take a statement.

13. On September 25, 2017, Travelers sent Ocean Reef a reservation of rights letter that provided, in relevant part:

> **RESERVATION OF RIGHTS**
>
> The Policy's Captain Warranty requires Ocean Reef to employ a full time, professional captain approved by Travelers. It is not clear that Ocean Reef complied with the Captain Warranty. Travelers therefore reserves its right to decline coverage if Ocean Reef failed to comply with the Policy's Captain Warranty.
>
> The Policy's Crew Warranty requires Ocean Reef to employ a professional crew. It is not clear that Ocean Reef complied, and Travelers reserves its right to decline coverage if Ocean Reef failed to comply with the Policy's Captain Warranty.
>
> * * *
>
> **REQUEST FOR INFORMATION**
>
> We reiterate our request for information and documentation demonstrating that Ocean Reef employed a professional captain at all relevant times, including records demonstrating the last time the captain attended the vessel.
>
> Please also provide information and documentation demonstrating that Ocean Reef employed a professional crew at all relevant times, including records demonstrating the crew's attendance at the vessel.

14. On September 26, 2017, Travelers filed a declaratory-judgment action in the U.S. District Court for the Western District of New York seeking a judicial declaration whether the Policy provided coverage for the damage to the yacht.

15. Travelers did not serve Ocean Reef with its complaint in the coverage action until November 14, 2017.

16. Based on the meeting between Travelers' investigator and Mr. Gollel and the additional information Ocean Reef provided in response to the reservation of

rights letter, Travelers determined that Ocean Reef breached the captain and crew warranties.

17. On November 9, 2017, Travelers sent Ocean Reef a denial letter that provided, in pertinent part:

> Our investigation reveals that before, during and after the claimed loss, Ocean Reef Charters, LLC did not employ a full time captain approved by Travelers. The failure to employ a captain on a full time basis who had been approved by Travelers is a violation of the Policy's express CAPTAIN WARRANTY[.]
>
> * * *
>
> Our investigation also revealed that no full or part time professional crew was employed by Ocean Reef Charters, LLC before, during or after the storm which is a violation of the CREW WARRANTY[.]
>
> * * *
>
> The separate violations of the CAPTAIN WARRANTY and of the CREW WARRANTY are each an independent basis that precludes coverage for the claim for the M/Y MY LADY under Policy ZYM-2130664-16-ND. **Coverage for the claim for damage to or loss of the M/Y MY LADY and associated expense is declined for each of those distinct violations.**

18. The Western District of New York exercised its discretion to transfer the coverage action to the Southern District of Florida for the convenience of the parties under 28 U.S.C. § 1404(a).

19. The district court in the Southern District of Florida granted summary judgment in favor of Travelers and entered final judgment in favor of Travelers.

20. Ocean Reef appealed the judgment in favor of Travelers. The Eleventh Circuit reversed the district court's first summary-judgment decision.

21. After remand, the district court entered summary judgment in favor of Ocean Reef.

22. On November 30, 2021, the district court entered a final judgment in favor of Ocean Reef in the amount of $2,534,207.94.

23. The final judgment included the Policy's $2 million limit for hull damage, $50,000 limit for damage to personal property, and $484,270.94 for pre-judgment interest.

24. The Eleventh Circuit affirmed the district court's second summary-judgment decision.

25. On September 1, 2023, Ocean Reef brought this bad faith action.

26. On September 27, 2023, Travelers paid Ocean Reef $2,544,034.99, which included the final judgment as well as $9,764.05 for post-judgment interest.

27. According to Ocean Reef, had Travelers paid the claim on or about October 12, 2017, it would have invested those funds in real estate that would have yielded an annual return on investment of between 25% to 100%.

28. Ocean Reef bases its claimed estimated return on investment on the following four real estate investments Mr. Gollel made through other entities he controls (not through Ocean Reef) over the past eight years.

    (a) Gollel Family Properties, LLC purchased a dock in Key Largo, Florida in April 2021 for $640,000 and sold it in June 2023 for $1.695 million.

    (b) Gollel Family Properties, LLC purchased a second dock in Key Largo, Florida some time within the past eight years, which it sold six months later for a 50% gain.

(c) Creek House Housing Partners, LLC purchased a home in Pompano Beach, Florida in October 2016 for $3.6 million, which it still owns. *Id.* at 56:16-58:1. According to Ocean Reef, this home is now worth between $18 to $22 million based on a market analysis Gollel performed himself.

(d) 4800 North Federal Highway, LLC purchased an office suite in Boca Raton, Florida in 2021 for approximately $1.5 million, which it still owns. According to Ocean Reef, this office suite has now doubled in value.

29. Mr. Gollel is the managing member of Ocean Reef, is responsible for everything Ocean Reef does, and has the sole authority to make all business decisions for Ocean Reef without input from anyone else.

30. The only business Ocean Reef ever engaged in was its ownership of the yacht.

31. Ocean Reef never chartered the yacht, did not make money, and never generated any revenue.

32. Ocean Reef has never owned any other vessel aside from the yacht or any other asset of any kind.

33. Ocean Reef never invested in any real estate, stocks, bonds, or any other financial vehicle of any kind.

34. Ocean Reef never had a brokerage account or any other type of account other than a checking account.

35. The only money that was ever deposited into Ocean Reef's checking account was provided by Mr. Gollel so that Ocean Reef could cover the yacht's operating expenses.

36. Following Hurricane Irma, Ocean Reef did not engage in any business operations.

37. Ocean Reef did not consider buying another vessel after Hurricane Irma.

38. Neither Mr. Gollel nor any of the non-party entities he controls have ever invested in anything other than real estate.

39. Neither Mr. Gollel nor any of his non-party entities have ever invested in U.S. Treasury Securities, stocks, bonds, or any other financial instruments.

40. Mr. Gollel has no written investment plan for investments he makes through other nonparty entities.

41. Mr. Gollel hears about real estate investment opportunities through word of mouth, usually when someone calls him and tells him about an opportunity.

42. In making real estate investments through other entities, Mr. Gollel considers factors that depend on each particular opportunity, including location, income, and redevelopment options.

43. Mr. Gollel, when acting on behalf of other non-party entities in making real estate investments, does not invest in every real estate opportunity he finds.

44. Mr. Gollel, when acting on behalf of other non-party entities, has no set number of investments that he makes per year.

45. When investing on behalf other non-party entities, there is no predetermined time that Mr. Gollel holds a property.

46. When investing through another non-party entity, Mr. Gollel does not automatically sell that entity's position in a property after a certain return on investment.

47. Non-party entities controlled by Mr. Gollel have lost money on real estate investments in the past, and there is no guarantee that a real estate investment will generate a return.

48. Mr. Gollel could not recall any specific investment opportunity available at the time Ocean Reef contends Travelers should have paid the claim.

49. Had Travelers paid Ocean Reef's claim in October 2017, Mr. Gollel could not say specifically when Ocean Reef or any non-party entity controlled by Mr. Gollel would have invested those funds.

50. If Ocean Reef or any non-party entity controlled by Mr. Gollel had invested the funds in real estate in 2017, Mr. Gollel did not know when Ocean Reef or that non-party entity would have sold the property.

51. If Ocean Reef had received claim funds from Travelers in October 2017, Mr. Gollel testified that Ocean Reef may have used those funds to make an investment itself or it may have transferred the money to another entity controlled by Mr. Gollel, through which the investment would have been made.

52. Ocean Reef used the $2,544,034.99 Travelers paid on September 27, 2023 to pay outstanding expenses for the yacht and to repay Mr. Gollel for loans he had given Ocean Reef over the years to cover its operating expenses.

III. PUTATIVELY DISPUTED FACTS

Ocean Reef's Response to Travelers' Statement of Facts attempted to dispute only Defense Statement of Facts (DSOFs) 10, 16, 19, and 45.

A. DSOF 10

Statement of Fact 10 relates to when Mr. Grezenbach first became suspicious of Ocean Reef. It says, "During that [September 2017] call, Grenzebach asked Mr. Gollel whether Ocean Reef had a captain for the yacht who was approved by Travelers, and Mr. Gollel did not respond, which Grenzebach interpreted as a "huge red flag." *Id*. Travelers cites Mr. Grenzebach's deposition as the evidence supporting this fact. In response, Ocean Reef does not dispute the fact that Mr. Grenzebach gave this sworn testimony. It argues that Mr. Grenzebach was already suspicious of Ocean Reef: "It is equally plausible that Grenzebach had already applied a 'huge red flag' to Gollel and unfairly planned to deny this claim from the outset because he had been involved in conversations with other Travelers' employees about the possible non-renewal of Gollel's coverage 'due to a very shady 2016 claim.'" ECF No. 144 at 2. Ocean Reef cites to an August 14, 2017, email that is attached to its response to the SOF.

Even viewing this evidence in the light most favorable to Ocean Reef, DSOF 10 does not say that the phone call with Mr. Gollel was the first thing that raised a "red flag" for Mr. Grenzebach. Regardless, if there is a genuine factual dispute whether the September 2017 call with Mr. Gollel first raised "red flags" for Mr. Grenzebach, this disputed fact is not material to the pending motion. Under either version of the facts, Mr. Grenzebach had seen "red flags" before the decision was made to deny Ocean Reef's claim. This fact is not material because Ocean Reef's summary

judgment pleadings do not develop an argument why Mr. Grenzebach's concern about "red flags" affects whether Travelers is entitled to judgment as a matter of law.

B. DSOF 16

Statement of Fact 16 relates to Travelers' motivation for filing the declaratory judgment lawsuit. It says: "Travelers filed the coverage action because it knew there was a possible breach of warranty, and Travelers wanted to be in a position to quickly resolve the issue of coverage in the event it confirmed there had been a breach." It cites to testimony from Mr. Grenzebach's deposition.

In response, Ocean Reef cites to other deposition testimony where Mr. Grenzebach said that Travelers filed suit to confirm "that our coverage decision was correct" and that Travelers "wanted to file it so that if we were correct, we could go forward; if we were incorrect, we could just take a voluntary dismissal and pay the claim." These additional deposition excerpts do not genuinely dispute Mr. Grenzebach's testimony that Travelers wanted a judicial determination whether it could properly deny the claim, and that it planned to promptly resolve the claim if a court found that it owed coverage. Here, too, even assuming a factual dispute existed, Ocean Reef's summary judgment pleadings do not develop an argument why Travelers' motivation for filing the declaratory judgment action is material.

C. DSOF 19

Statement of Fact 19 relates to whether Travelers tried to determine if the lack of a captain or crew caused the damage to the yacht. It says, "Grenzebach also determined that Ocean Reef's breaches of these warranties contributed to the damage

to the yacht based on his discussions with Gollel and marine surveyors." ECF No. 137 at 4. It cites from Mr. Grenzebach's deposition testimony, with the cited excerpts attached as exhibits to the SOF. ECF No. 137-5.

In response, Ocean Reef says (1) Grenzebach was not a licensed captain, so he was not qualified to make any meaningful determination about causation, (2) Grenzebach did not recall specific conversations with any marine surveyors prior to the declination, and (3) the claim file does not record any conversations between Grenzebach and a marine surveyor. Ocean Reef cites to portions of Mr. Grenzebach's deposition as support for these arguments. ECF No. 144 at 3.

Ocean Reef has not genuinely disputed this fact. With one exception, none of the portions of the Grenzebach deposition that Ocean Reef cites are in the record.[3] The only cited portion that is in the record is the following colloquy:

> Q: Well, other than Mr. Gollel, is there anyone else that you spoke to or consulted with about this causation analysis?
>
> A: At the time of this declination I'm sure that I spoke to the surveyors, but I honestly don't recall the specific conversations about it, but I suspect I did.

ECF No. 137-5 at 18 (Grenzebach Tr. 135:22-136:2). This colloquy does not contradict DSOF 19.

D. DSOF 30

Statement of Fact 30 relates to what categories of damages Ocean Reef is claiming. It says "According to the testimony of Ocean Reef's Rule 30(b)(6) witness,

[3] Compare ECF No. 144 ¶19 (citing Grenzebach Tr. 128:3-12, 128:25-129:6, 136:5-13, and 65:20-25) to ECF No. 137-5 at 16-18.

Gollel, who was designated to testify regarding, among other topics, the damages sought by Ocean Reef, the damages Ocean Reef is seeking in this bad faith action are limited to the alleged lost return on potential investments Ocean Reef could have generated had Travelers paid Ocean Reef's claim within 30 days after Ocean Reef reported the damage to the yacht, or on or about October 12, 2017." It cited Mr. Gollel's testimony as the corporate representative of Ocean Reef.

In response, Ocean Reef said, without citation to the record, "Disputed; in addition to lost investment returns as compensatory damages, Ocean Reef also seeks prejudgment interest and attorneys' fees. Ocean Reef's claim for punitive damages was dismissed by this Court but is preserved for appeal."

Although the Response did not cite the record, I take judicial notice that the Second Amended Complaint asks for prejudgment interest and attorneys' fees. As discussed below, this Response binds Ocean Reef and limits the categories of damages it can seek.

E. DSOF 45

Statement of Fact 45 relates to Ocean Reef's lost investment damages claim. It said, "Gollel has no process that he uses to find real estate investment opportunities for other non-party entities." It cited Mr. Gollel's testimony as the Ocean Reef corporate representative. In response, Ocean Reef said, "Disputed; Gollel does not have a defined process for finding every real estate investment, but he does regularly look for, identify, and evaluate investment opportunities." It cited to pages 60-63 of Mr. Gollel's deposition transcript. Not all of these pages are in the record. *See* ECF

No. 137-1 at 16-17. Nevertheless, other undisputed facts support Ocean Reef's asserted facts. But, as discussed below, even viewing this distinction in Ocean Reef's favor, there is insufficient non-speculative evidence of damages.

IV. DISCUSSION

Count I of the Second Amended Complaint alleges Travelers violated Florida Statute 624.155. That statute authorizes a civil action for damages by an insured against its insurer. As relevant here, an insured can recover under two alternative theories: (1) bad faith failure to settle, Fla. Stat. § 624.155(1)(b)(1), or (2) unfair claim settlement practices, Fla. Stat. § 626.9541(1)(i)3. Under either theory, the insured must show monetary damages. Although pled in a single count, Ocean Reef asserts four separate theories for recovery: one for bad faith failure to settle, and three for unfair claim settlement practices.

Travelers moves for summary judgment on two alternative legal grounds: even viewing the evidence in the light most favorable to Ocean Reef, (1) a reasonable jury could not find bad faith failure to settle or unfair settlement practices, and (2) Ocean Reef's asserted damages are too speculative. ECF No. 138.

A. Bad Faith Failure to Settle

An insured can recover for bad faith failure to settle if the insurer does not "attempt[] in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests." Fla. Stat. § 624.155(1)(b)(1); ECF No. 38 ¶¶ 19-21; *see* Florida Pattern (Civil) Jury Instruction 404.4.

As one distinguished member of this Court summarized the applicable law:

> Courts apply a totality-of-the-circumstances test to determine whether an insurer acted in bad faith in handling an insured's claim. *See Cousin v. GEICO Gen. Ins. Co.*, 719 F. App'x 954, 956 (11th Cir. 2018) (citing *Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 680 (Fla. 2004)). In making this determination, courts consider a number of factors, commonly referred to as the *Laforet* factors:
>
> > (1) efforts taken by the insurer to resolve the coverage dispute promptly; (2) the substance of the coverage dispute; (3) the insurer's diligence and thoroughness in investigating the facts; and (4) efforts made by the insurer to settle the liability claim in the face of the coverage dispute.
>
> *See Pozzi Window Co. v. Auto-Owners Ins.*, 446 F.3d 1178, 1188 (11th Cir. 2006) (citing *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 63 (Fla. 1995)). While the issue of bad faith is generally a question for the jury, "[c]ourts may decide this issue as a matter of law [ ] when material facts are not in dispute." *Kwiatkowski v. Allstate Ins. Co.*, 717 F. App'x 910, 912 (11th Cir. 2017) (affirming summary judgment where "no reasonable jury could find that [insurer] did not act in bad faith in failing to settle"); *see also Pozzi Window*, 446 F.3d at 1189 ("We conclude that [the insurer] was entitled to judgment as a matter of law on the bad faith issue.").

Do v. Geico Gen. Ins. Co., No. 1:17-CV-23041-JLK, 2019 WL 3890300, at *3 (S.D. Fla. July 10, 2019).

1. Travelers' Motion for Summary Judgment on the bad faith failure to settle claim is unopposed

A party responding to a motion for summary judgment must address the merits of the opponent's arguments with fully developed responses; the failure to do so leaves the opponent's argument unopposed. *See supra* at 4*; see also Jones v. Bank of Am., N.A.,* 564 Fed. Appx. 432, 434 (11th Cir. 2014) ("[A] party's failure to respond to any portion or claim in a motion indicates such portion, claim or defense is

unopposed. ... [W]hen a party fails to respond to an argument or otherwise address a claim, the Court deems such argument or claim abandoned."); *Beres v. Daily J. Corp.*, No. 22-CV-60123, 2022 WL 805733, at *6 n.6 (S.D. Fla. Mar. 8, 2022) ("It is axiomatic that arguments not supported and properly developed are deemed waived.").

Travelers' summary judgment motion argued that the *Laforet* factors entitled it to summary judgment. ECF No. 138. It argued by analogy from cases involving allegations of statutory or common law bad faith failure to settle. *Id.* at 12-13 (citing *Pozzi Window Co. v. Auto-Owners Ins.,* 446 F.3d 1178 (11th Cir. 2006) (common law bad faith);[4] *Do v. Geico Gen. Ins. Co.,* No. 1:17-CV-23041-JLK, 2019 WL 3890300, at *2 (S.D. Fla. July 10, 2019) (statutory bad faith under 624.155(1)(b)(1)). It discussed how the *Laforet* factors apply to the facts at hand. In sum, Travelers made a developed argument that under the totality of the circumstances it had not acted in bad faith by contesting Ocean Reef's claim.

Ocean Reef did not respond to the merits of these arguments. Its Response was limited to addressing (1) liability for unfair settlement practices under Section 626.9541, ECF No. 145 at 1-7, and (2) whether there are non-speculative economic damages. *Id.* at 7-12. It lacked any developed argument for why Travelers violated its duty to settle under Section 624.155(1)(b)(1). It did not discuss the *Laforet* factors.

[4] Ocean Reef says it is unclear from the Eleventh Circuit opinion whether *Pozzi Window* involved a statutory or common law bad faith claim. ECF No. 145 at 4-5. The trial court decision makes clear that it was a common law bad faith claim. 429 F. Supp. 2d 1311, 1313-14 (S.D. Fla. 2004) ("This is a third-party action . . . for breach of insurance contract and common law bad faith."). And, as most relevant here, it was not a claim for unfair insurance settlement practices. ECF No. 145 at 5.

It did not point to evidence in the record that created an issue of fact material to whether Travelers could and should have settled Ocean Reef's claim.

The Court cannot, and will not, formulate arguments for a litigant. "Under the party presentation principle, American courts function in an 'adversarial system of adjudication' whereby 'we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.' This system is 'designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.'" *United States v. Campbell*, 26 F.4th 860, 872 (11th Cir. 2022) (citations omitted). "When a party fails to respond to substantive arguments . . . it deprives the Court of legal advocacy and insight that it might use in arriving at the proper result. 'Judges are not like pigs, hunting for truffles buried in briefs' or researching responsive arguments that parties refuse to make for themselves. *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)." *Towns v. Directors Guild of Am., Inc.*, No. 1:19-CV-03248, 2020 WL 4001131, at *2 (N.D. Ga. July 15, 2020).

Travelers' motion for summary judgment on Ocean Reef's Section 624.155(b)(1) claim is deemed unopposed.

2. The undisputed record supports judgment for Travelers

Even though the motion is unopposed, I must review the merits to determine (1) whether there are genuinely disputed issues of material fact and (2) whether the record supports judgment for Travelers on this claim. *United States v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla.,* 363 F.3d 1099, 1101 (11th Cir.

2004). ("[T]he district court cannot base the entry of summary judgment on the mere fact that the motion was unopposed, but, rather, must consider the merits of the motion.").

At base, Travelers says it could not have failed to settle in bad faith because the law was unclear and Travelers' conduct (including filing a declaratory judgment lawsuit) was prompt and appropriate under the circumstances.

The record supports Travelers' argument that it was unclear whether Florida law or federal maritime law applied. Counts I and II of the declaratory judgment complaint asked for a declaration that Travelers did not owe coverage because Ocean Reef had violated the captain and crew warranties. ECF No. 137-6. Ocean Reef's Fifth Affirmative Defense was that the Florida Anti-Technical Statute precluded Travelers from denying coverage without proof that the lack of a captain or crew had contributed to the loss. ECF No. 49 in Case No. 18-cv-81270 at 7-8. The issue framed by these pleadings was whether Travelers could deny Ocean Reef's claim without proving that the lack of a captain or crew contributed to the loss. That answer turned on whether federal maritime law applied or Florida law applied.

Judge Ruiz held that federal maritime law applied and granted summary judgment to Travelers. The Eleventh Circuit reversed and ruled that Florida substantive law (i.e., the Anti-Technical Statute) applied, but only after surveying hundreds of years of English and American maritime precedent and conceding that the then-existing caselaw was a "mess." *Travelers Prop. Cas. Co. of Am. v. Ocean Reef*

Charters LLC, 996 F.3d 1161 (11th Cir. 2021) ("*Travelers I*"). The Eleventh Circuit's reasoning was:

- In *Wilburn Boat Co. v. Firearm's Fund Ins. Co.,* 348 U.S. 310 (1955), the Supreme Court held that state law applied to marine insurance contracts unless there was an "established federal maritime rule governing the issue at hand." *Travelers I,* 996 F.3d at 1162. But, it also held that there was not an established federal maritime rule that required literal compliance with express warranties. *Id.* at 1164-65. So, depending on the state's laws, a nexus between the policy breach and the loss might be a prerequisite to denying coverage.
- There was subsequent Eleventh Circuit precedent saying that federal maritime law applied to all express warranties in maritime insurance contracts. *Id.* at 1168 (citing *Lexington Ins. Co. v. Cooke's Seafood,* 835 F.2d 1364, 1366 (11th Cir. 1988) and *Hilton Oil Transport v. Jonas,* 75 F.3d 627, 630 (11th Cir. 1996));
- Even though they were binding on lower courts and on subsequent Eleventh Circuit panels, these later cases were inconsistent with *Wilburn Boat*. *Travelers I* at 1168.
- To harmonize the conflicting authorities, the *Travelers I* panel held for the first time that the *Wilburn Boat* analysis should be done at the level of the specific warranty in question. *Id*. It conceded, "This approach may be messy

and do little to solve the overall doctrinal confusion, but we think it the only path open to us if we are going to be faithful to *Wilburn Boat*." *Id.*

- Addressing an issue of first impression in this Circuit, it held that federal maritime law did not stop the Florida Anti-Technical statute from applying to captain and crew warranties. *Id.* at 1169-70.

This undisputed procedural history supports Traveler's argument that the second *Laforet* factor — the substance of the coverage dispute — strongly weighs against a finding of bad faith failure to settle. This case presented an open question of complex federal law. It was not unreasonable for Travelers to seek clarification of the applicable law before settling the claim.

The third *Laforet* factor — the insurer's diligence and thoroughness in investigating the facts — also weighs against a finding of bad faith failure to settle. It is undisputed that Mr. Grenzebach immediately began investigating Ocean Reef's claim, including contacting Mr. Gollel and asking for information relevant to the captain and crew warranties. DSOF (ECF No. 137) ¶¶ 8-10, 12. It is also undisputed that Travelers investigated whether the lack of captain or crew caused the loss. *See supra* §III(C). Travelers sent a Reservation of Rights letter two weeks after the claim was submitted. *Id.* ¶14. That letter invited Ocean Reef to submit evidence showing that it had complied with the captain and crew warranties. *Id.* The undisputed record evidence shows that Travelers diligently investigated Ocean Reef's claim.

Finally, Travelers complied with the first *Laforet* factor by inviting Ocean Reef to submit evidence supporting the claim, Travelers was creating a process to resolve the claim promptly, if a resolution was possible.[5]

For all these reasons, Travelers is entitled to summary judgment on Ocean Reef's bad faith failure to settle claim. No reasonable jury could find under the totality of the circumstances that Travelers did not act "fairly and honestly toward its insured and with due regard for her or his interests." Given the lack of clear precedent, Travelers was free to take a good-faith legal position on an open question of law.

A brief note on several of Ocean Reef's undeveloped arguments. First, Ocean Reef tries to draw an adverse inference from the fact that Travelers filed the declaratory judgment action in federal court in New York. In response to DSOF 16, Ocean Reef argued that the real reason for filing suit in New York was to gain "a forum advantage, expecting to deny coverage and hoping a New York forum might avoid application of Florida's anti-technical statute." ECF No. 144 at 3. The response to a Statement of Material Facts is not the proper place to make substantive arguments. *Baker v. City of Delray Beach*, No. 21-82076-CV, 2023 WL 2469715, at *4 (S.D. Fla. Feb. 16, 2023), *aff'd,* No. 23-10760, 2024 WL 1107093 (11th Cir. Mar. 14, 2024). Moreover, the summary judgment response did not further develop this argument and Ocean Reef's conclusion is not self-evident.

[5] The final *Laforet* factor does not apply because there was no underlying liability claim.

Our federal judicial system assumes that a non-Florida judge can accurately decide whether Florida law applies to a particular legal issue, and apply that law correctly. And, there are facts in the record that suggest nothing suspicious about Travelers filing suit in New York. It is an undisputed fact that Ocean Reef's mailing address listed on the yacht insurance policy was in Rochester, New York. Ocean Reef's Answer to the Second Amended Complaint admitted that Ocean Reef's principal place of business is in Rochester, New York and that all of its members live in New York. ECF No. 80 ¶4. Notably, the New York Court did not transfer the case based on improper venue under Rule 12(b)(3); it transferred it for the convenience of the parties and witnesses under 28 U.S.C. § 1404.

Second, Ocean Reef seems to imply that there was something nefarious about Travelers filing the New York action but not serving the complaint until after issuing the denial letter. That argument also is undeveloped and therefore speculative.

Third, Ocean Reef says Travelers paid a prior claim under this policy without invoking the captain and crew warranties. Ocean Reef cited this fact in its Civil Remedy Notice. ECF No. 38-2 at 5. It referenced the same fact in the introduction to its summary judgment response. ECF No. 145 at 1. But, this fact is not included in Ocean Reef's Statement of Material Facts. *See* ECF No. 144. Regardless, Ocean Reef does not explain why that fact matters to whether Travelers failed to settle the Hurricane Irma claim in bad faith. There are many good-faith reasons why an insurer may choose to pay a claim even though it has an arguable legal basis to deny coverage.

For example, the amount of the claim may exceed the likely cost of further claims processing and/or litigation.

B. Unfair Settlement Practices

The Second Amended Complaint alleges the following unfair claim settlement practices:

- Failing to adopt and implement standards for the proper investigation of claims. Fla. Stat. § 626.9541(1)(i)3a; ECF No. 38 ¶¶26-27.
- Denying claims without conducting reasonable investigation based upon available information. Fla. Stat. § 626.9541(1)(i)3d; ECF No. 38 ¶28.
- Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement. Fla. Stat. §626.9541(1)(i)3f; ECF No. 38 ¶29.

The caselaw interpreting these statutes is sparse. Multiple cases hold that the *Laforet* factors apply to claims under these statutes. For example, *Shannon R. Ginn Const. Co. v. Reliance Ins. Co.,* 51 F. Supp. 2d 1347, 1353 (S.D. Fla. 1999, cited Florida precedent for the conclusion that the Court should "consider the totality of the circumstances, including:

1. the insurer's effort to resolve promptly the coverage issues or otherwise limit any potential prejudice to the insured;

2. the substance of the coverage disputes or the weight of the legal authority on the coverage issue; and

3. the insurer's diligence or thoroughness in investigating the facts specifically pertinent to coverage."

The only case cited by Ocean Reef, *Cooper v. Federated Nat'l Ins. Co.,* 285 So. 3d 1036 (Fla. Dist. Ct. App. 2019), held that it was error to not instruct the jury on the specific terms of the statutes, but it does not appear that the parties in *Cooper* asked for a jury instruction on the *Laforet* factors.

Ocean Reef says Travelers' unfair claim settlement acts were (1) "it misrepresented facts under Section 626.9541(1)(i)(3)(b) by omitting any discussion of the anti-technical statute from the denial letter and then vigorously denied that it applied; and (2) it failed to provide a reasonable explanation for its denial 'in relation to the facts or applicable law' under Section 626.9541(1)(i)(3)(f) by not discussing the anti-technical statute's causation requirement in its denial letter. [and (3)] it denied Ocean Reef's claim without conducting a reasonable investigation of the anti-technical statute's causation requirement under Section 626.9541(1)(i)(3)(d)." ECF No. 145 at 2- 3.[6]

[6] Although Travelers only relies on the *Laforet* factors, there are other reasons why the current record would not support a finding of bad faith claims settlement practices. Ocean Reef's summary judgment pleading references subpart 3b, but the Second Amended Complaint does not allege a violation of subpart 3b; it alleges violations of subparts 3a, 3d, and 3f. Subpart 3a requires proof of a lack of investigative standards. There are no facts in the summary judgment record relating to Travelers' investigative standards, and no discussion in Ocean Reef's pleading about subpart 3a. Similarly, subpart 3d requires proof that the insured did not conduct a reasonable investigation. Although Ocean Reef argues that Mr. Granzebach was not competent to assess causation, the record lacks any evidence supporting this argument.

Travelers argues that the *Laforet* factors — particularly the second factor about the substance of the coverage disputes or the weight of the legal authority on the coverage issue — controls the outcome. ECF No. 147. I agree. For the same reasons discussed above, Travelers did not act in bad faith by deciding to contest Ocean Reef's claim, given the state of the governing law.

V. DAMAGES

Ocean Reef asks for four categories of monetary damages: (1) loss of use of money, (2) attorney's fees, (3) prejudgment interest, and (4) carrying costs for the loan secured by the yacht.

I start by framing the damages theory and clarifying some terminology. Loss-of-use damages are related to, but different from, lost profits damages. Loss-of-use damages reflect an opportunity cost — what the insured would have earned if it could have invested the money in something else. Prejudgment interest incorporates this idea. *Catalfumo v. Catalfumo*, 704 So. 2d 1095, 1100 (Fla. Dist. Ct. App. 1997) (purpose of prejudgment interest is to compensate plaintiff for losing the use of his money during pendency of litigation).

In contrast, lost profits damages are awarded to an ongoing business whose operations are affected by a tort or breach of contract; the victim recovers the profits the business would have generated in the absence of the wrongful act. *See, e.g., Katz Deli of Aventura, Inc. v. Waterways Plaza, LLC,* 183 So. 3d 374, 380 (Fla. Dist. Ct. App. 2013); *Levitt-ANSCA Towne Park P'ship v. Smith & Co.,* 873 So. 2d 392, 396 (Fla. Dist. Ct. App. 2004). "Only continuing businesses are entitled to recover lost

profits attributable to a defendant's acts." *City of Key West v. Duck Tours Seafari, Inc.*, 972 So. 2d 901, 903 (Fla. Dist. Ct. App. 2007) (per curiam).

Despite the technical difference, concepts from lost-profit cases can be applied to loss-of-use cases. *See Kane v. Shearson Lehman Hutton, Inc.,* 916 F.2d 643, 647 (11th Cir. 1990) (the two damages theories are "essentially" the same). When an insurer wrongfully denies a claim, loss-of-use damages compensate the insured for being unable to use the withheld money. That lost use may have been, but is not required to have been, a financial investment that would have generated a profit. For example, in theory the insured can be damaged by not having the money to pay off a loan and thereby incurring unnecessary interest costs.

This case involves loss-of-use, not lost-profit damages. Ocean Reef was not an operating business trying to generate revenue. It was a single purpose limited liability entity created to hold title to the yacht. Ocean Reef says Traveler's refusal to pay the claim in 2017 deprived it of the use of the insurance proceeds for six years. Ocean Reef says it would have invested the insurance proceeds into profitable real estate projects. It also says it was required to incur unnecessary loan carrying costs.

A. Carrying Cost Damages

In its Response to Travelers' Summary Judgment motion and at oral argument, Ocean Reef asserted for the first time that it was entitled to damages for the carrying cost of the mortgage on the yacht. Ocean Reef said, "In this case, at an absolute minimum, Ocean Reef must be entitled to recover its carrying costs of the Yacht from October 13, 2017 (30 days after the loss) through [September 27, 2023]

(when Travelers paid), which would be a component of any 'returns' it could have expected if Travelers paid those funds timely." ECF No. 145 at 8.

A party cannot raise "a new legal claim for the first time in response to the opposing party's summary judgment motion." *Gilmour v. Gates, McDonald & Co.,* 382 F.3d 1312, 1313 (11th Cir. 2004); *see also supra* at 4. In addition to being too late, this argument directly contradicts Ocean Reef's Response to DSOF 30, which said that Ocean Reef's damages were limited to lost returns on potential investments, prejudgment interest, and attorneys' fees. Ocean Reef is bound by that response. *Shuler v. Ingram & Assocs.*, 441 F. App'x 712, 718 (11th Cir. 2011) ("a party is bound by the admissions in his pleadings.") (citation omitted).

Extinguishing or reducing a loan balance is hardly an "investment" under the common meaning of that term. Moreover, in his deposition, Mr. Gollel only testified about real estate investments. And, his expert report discusses only real estate investments.

Ocean Reef argues, "Gollel was not asked at deposition about whether he would have considered paying off any or all of the loan balance depending on market conditions at the time." ECF No. 145 at 8. That argument misses the point. As the non-movant with the burden to prove damages at trial, Ocean Reef must cite to affirmative evidence in the summary judgment record that creates a genuine disputed issue of fact. Mr. Gollel's non-testimony fails that test.

In any event, the summary judgment record does not contain evidence to support carrying-cost damages. None of the facts contained in the Statements of

Material Facts discuss carrying cost damages. There is no citation to a calculation of the carrying cost amount. At best, appended to Ocean Reef's summary judgment response is a First Preferred Ship Mortgage for $1,000,000 dated August 3, 2016. ECF No. 145-1. This document is not properly in the record. Attaching a document to a response pleading is not the proper way to create a summary judgment record. Local Rule 56.1 (b)(2)(D) requires:

> Any additional facts that an opponent contends are material to the motion for summary judgment shall be numbered and placed immediately after the opponent's response to the movant's Statement of Material Facts.

And, this additional fact must include a pincite to a material in the record. Local Rule 56.1(b)(1)(B). The mortgage is not attached to Ocean Reef's Statement of Material Facts, so I have discretion not to consider it. *See* Local Rule 56.1(d) (listing available remedies for non-compliance with Local Rule 56.1, including "other sanctions that the Court deems appropriate.").

Even if I consider it, neither the Mortgage nor any other evidence in the record shows that in September 2017 Ocean Reef owed a loan balance or was making interest payments on a loan that corresponded to the Mortgage. This record is equally consistent with the loan having been paid off. There is not sufficient evidence from which a reasonable jury could find in Ocean Reef's favor. Ocean Reef cannot recover damages for loan carrying costs.

B. Lost Investment Damages

Travelers first argues that Ocean Reef cannot recover damages for lost profits of another entity. ECF No. 138 at 15-16. This argument misconstrues the kind of

damages being sought. Ocean Reef is not saying a different Gollel entity lost profits because Travelers denied the claim. It is saying that Mr. Gollel would have used Ocean Reef as a vehicle to invest the insurance proceeds in real estate investment. Viewing the evidence in the light most favorable to Ocean Reef, a reasonable jury could find this argument credible. Ocean Reef existed for the sole purpose of holding title to the yacht. Once the yacht was destroyed, the LLC became an empty corporation that Mr. Gollel could have repurposed.

Travelers' principal argument is that Ocean Reef's claimed lost investment damages are too speculative. Ocean Reef does not dispute that it must prove its damages with "reasonable certainty." ECF No. 145 at 3 & n.9.

The applicable pattern jury instruction says in relevant part:

> For (claimant) to establish the amount of its lost profits with reasonable certainty, it must prove that a reasonable person would be satisfied that the amount of lost profits which it may be entitled to recover is not simply the result of speculation or guessing. Instead, (claimant) must prove that there is some standard by which the amount of lost profits may be established. (Claimant) does not have to be able to prove that the amount of lost profits can be calculated with mathematical precision as long as it has shown there is a reasonable basis for determining the amount of the loss.
>
> Even though (claimant's) business is not established or does not have a "track record,"it still may be able to establish the amount of lost profits which it] may be entitled to recover if it proves that there is some standard by which the amount of lost profits may be established.

Florida Pattern Contract & Business Jury Instruction 504.3 (cleaned up).

The following undisputed facts are relevant to Ocean Reef's loss-of-use damages claim:

53. Between in or about 2016 and in or about 2024, Mr. Gollel made four profitable real estate investments through other entities he controls: (1) Gollel Family Properties, LLC purchased a dock in Key Largo, Florida in April 2021 for $640,000 and sold it in June 2023 for $1.695 million, (2) Gollel Family Properties, LLC purchased a second dock in Key Largo, Florida some time within the past eight years, which it sold six months later for a 50% gain, (3) Creek House Housing Partners, LLC purchased a home in Pompano Beach, Florida in October 2016 for $3.6 million, which it still owns. *Id*. at 56:16-58:1. According to Ocean Reef, this home is now worth between $18 to $22 million based on a market analysis Gollel performed himself, and (4) 4800 North Federal Highway, LLC purchased an office suite in Boca Raton, Florida in 2021 for approximately $1.5 million, which it still owns. According to Ocean Reef, this office suite has now doubled in value.

54. Mr. Gollel is the managing member of Ocean Reef, is responsible for everything Ocean Reef does, and has the sole authority to make all business decisions for Ocean Reef without input from anyone else.

55. Neither Mr. Gollel nor any of the non-party entities he controls have ever invested in anything other than real estate.

56. Mr. Gollel has no written investment plan for investments he makes through other nonparty entities.

57. Mr. Gollel hears about real estate investment opportunities through word of mouth, usually when someone calls him and tells him about an opportunity.

58. In making real estate investments through other entities, Mr. Gollel considers factors that depend on each particular opportunity, including location, income, and redevelopment options.

59. Mr. Gollel does not invest in every real estate opportunity he finds.

60. Mr. Gollel, has no set number of investments that he makes per year.

61. There is no predetermined time that Mr. Gollel holds a property.

62. Mr. Gollel does not automatically sell that entity's position in a property after a certain return on investment.

63. Non-party entities controlled by Mr. Gollel have lost money on real estate investments in the past, and there is no guarantee that a real estate investment will generate a return.

64. Mr. Gollel could not recall any specific investment opportunity available at the time Ocean Reef contends Travelers should have paid the claim.

65. Had Travelers paid Ocean Reef's claim in October 2017, Mr. Gollel could not say specifically when Ocean Reef or any non-party entity controlled by Mr. Gollel would have invested those funds.

66. If Ocean Reef or any non-party entity controlled by Mr. Gollel had invested the funds in real estate in 2017, Mr. Gollel did not know when Ocean Reef or that non-party entity would have sold the property.

67. If Ocean Reef had received claim funds from Travelers in October 2017, Mr. Gollel testified that Ocean Reef may have used those funds to make an investment itself or it may have transferred the money to another entity controlled by Mr. Gollel, through which the investment would have been made.

68. Ocean Reef used the $2,544,034.99 Travelers paid on September 27, 2023 to pay outstanding expenses for the yacht and to repay Mr. Gollel for loans he had given Ocean Reef over the years to cover its operating expenses.

DSOF ¶¶ 32-57.

Simply put, the methodology argument is: (1) Mr. Gollel has made profitable and unprofitable real estate investments in the past, (2) he made four profitable investments during the relevant time period, (3) he looked for other investment opportunities between 2017 and 2023, (3) he heard about a lot of opportunities, (4) there are no identifiable particular investments that he was unable to pursue, (5) it cannot be said that any particular investment would have been profitable. Even considering all these undisputed facts in the light most favorable to Ocean Reef, the damages are too speculative.

In *Kaplan v. Nautilus Ins. Co.*, 861 Fed. Appx. 798 (11th Cir. 2021), following a ruling that plaintiffs' insurer breached the policy and should have provided the plaintiffs with a defense, the plaintiffs brought a bad faith action against their insurer and sought damages for the alleged lost return on their investment. The Court noted that the plaintiffs bore the burden of establishing that "there is some

standard by which the amount of damages may be adequately determined." *Id*. at 805. The Court rejected plaintiffs' attempt to establish damages by showing "historical information indicating how they invested [previously] and [testimony that] they would have invested more money if they had not been personally funding th[e] suit." *Id*. The Court noted that the plaintiffs "did not provide evidence, besides their own testimony, to show that they would have in fact invested this money." *Id*. For example, the plaintiffs "failed to submit an investment plan or other similar evidence, which could have shown how they invested in the past and how they planned to invest in the future." *Id*. (citing *Messer v. E.F. Hutton & Co*., 833 F.2d 909, 922–23 (11th Cir. 1987) and *Himes v. Brown & Co. Securities Corp*., 518 So. 2d 937, 938-39 (Fla. Dist. Ct. App. 1987) (finding plaintiff could not a sustain claim for lost return on investment because he did not "prove that he would have completed the time-sensitive transactions at precisely the correct time")). The Court in *Kaplan* declined to award lost investment damages "when th[e] profits are dependent on a party taking an action that it is unclear he would have taken." *Id*. at 805. The Court denied the damages as speculative and unsupported.

Similarly, here, I have only Mr. Gollel's testimony about his historical investment successes and his attestation that he would have invested this money in an unspecified, putatively successful, real estate venture if it had been available to him. Without more specificity about the proposed investment, I find these damages to be too speculative.

CONCLUSION

For the foregoing reasons, Travelers' Motion for Summary Judgment [ECF No. 138] is GRANTED. Final Judgment will be entered by separate order.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, in the Southern District of Florida, this 16th day of July 2025.

BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE